IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 509

AMBASSADOR HOTEL COMPANY OF LOS ANGELES

COMMISSIONER OF INTERNAL REVENUE

Reply Brief for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 509

AMBASSADOR HOTEL COMPANY OF LOS ANGELES,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Reply Brief for Petitioner

On page 8 of his brief in opposition, respondent is reduced to arguing a decision in the Tax Court finding an overpayment is "the legal equivalent of an order allowing the refund."

This vague and nebulous argument overlooks that Section 6407 of the Internal Revenue Code of 1954 specifically defines when a refund is allowed and also the Code (Section 6402) itself contains the only authority to allow a refund and it is not given to the Tax Court, as this Court itself has clearly said in the quotation set forth on page 5 of the Petition.

The attempt on page 10 to avoid the plain, blunt statement in this Court's decision that the Tax Court cannot order a refund is completely untenable.

It is obvious that if the Tax Court's decision starts the one year period as the court below holds, many assessments have been made too late in reliance on the regulation quoted on page 7 of the Petition and the attempt to distinguish it at page 10 in the brief in opposition is a lame one.

Of course the reading of Section 3807 (p. 24, resp. br.) leaves no doubt the assessment may be made thereunder within one year after an allowance of a credit or refund which is allowed only if the conditions stated in paragraphs (2) and (3) thereof exist, and, as pointed out at page 8 of our Petition, they certainly do not exist here.

Respectfully submitted,

JOHN E. HUGHES
JOHN W. HUGHES
HAROLD R. BURNSTEIN
Counsel for Petitioner

Dated: December 9, 1960.